

**REMARKS**

Applicants respectfully request reconsideration and allowance of claims 1-7 that are pending in the above-identified patent application.

In paragraph 1 of the Office Action the Oath/Declaration stands objected to because the title of the invention does not match the title of the invention according to the Bib Data Sheet and U.S. 6,673,113. By the amendment to the Title hereinabove applicants submit this objection is overcome.

In paragraph 2 of the Office Action the disclosure stands objected to because of the title (see above) and the CROSS REFERENCE TO RELATED APPLICATIONS required updating to reflect the issuance of U.S. 6,673,113. By the amendments hereinabove applicants submit these objections are overcome.

In paragraphs 3 and 4 of the Office Action claims 1-7 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-7 of U.S. Patent No. 6,673,113. In response applicants submit herewith a suitable terminal disclaimer (and fee) overcoming this rejection.

In paragraphs 5 and 6 of the Office Action claims 1 and 2 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,520,996 to Manasas et al. ("Manasas et al."). Applicant's respectfully traverse the Examiner's rejection.

The present invention is directed to an intervertebral spacer device comprising opposing first and second plate members having disposed therebetween at least one arched strip spring restoring force providing element. The arched strip springs are defined as having flat ends and a curvate central portion [paragraph 0015], wherein the arched strip springs are mounted to a first plate surface at the lateral ends of the strip and the peaks of the arches are fixed to the opposing

plate [paragraph 0016]. Such an apparatus results in an arrangement wherein a compressive force applied to the plates at a lateral offset, or laterally asymmetric, location will cause the plates to narrow relative to one another at that location while remaining spaced apart at the opposing lateral side, approximating the anatomical responsiveness of the natural cartilage material present in the healthy intervertebral space.

Given the foregoing specific description of the claim term “arched strip spring” by the applicants in the specification, Manasas et al. cannot anticipate the invention as claimed in claim 1. Manasas et al. clearly does not include at least one arched strip spring. Manasas et al. merely provides a torsional support member comprising a curved strip fixed at one end to a first of two opposing plates and at a second end to a second of said opposing plates. There is no teaching or suggestion of anchoring both ends of the strip of Manasas to the same plate, let alone fixing the curvate portion of the strip to the opposing plate as in the presently claimed invention.

Moreover, applicants respectfully disagree with the assertion by the examiner that in Manasas et al “...struts 300 would inherently supports compressive loads as well as torsional loads.” Applicants submit that compressive loads in Manasas et al. are specifically handled by axial support 200, and in the absence of such axial support 200 torsional supports 300 would not bear a compressive load. Manasas et al. is specific at col. 5, lines 9-14 that the axial and torsional support elements are separate and distinct: “As used herein... an axial support is a structure that provides support and resistance to compression in the axial direction ... torsional support refers to a structure providing resistance and support against twisting or bending”. Therefore, by definition, Manasas et al. specifically states torsional supports 300 cannot act as supporting compressive loads.

Since Manasas et al. does not comprise, teach or suggest employing an arched strip spring as defined by the applicants, applicants respectfully submit that the Manasas et al. reference fails to disclose each and every feature of the invention recited in claim 1. Accordingly, Applicants respectfully request that the Examiner withdraw the § 102(b) rejection of claim 1 over the Manasas et al. reference. Further, claim 2 is likewise not anticipated by Manasas et al. vis-a-vis its dependency on claim 1.

In paragraphs 7 – 8 of the Office Action, the Examiner rejected claims 1-7 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,989,291 to Ralph et al. (“Ralph et al.”) in view of Manasas et al. Applicants respectfully traverse the Examiner’s rejection. The Examiner cites the Ralph et al. reference for the purpose of arguing an intervertebral spacer device as disclosed in Ralph et al. may be combined with the intervertebral spacer device comprising at least one arched strip spring of Manasas et al. to meet the claim limitations of claims 1-7 of the instant application. However, the Examiner acknowledges Ralph et al. does not disclose a spring element as an arched strip spring element, and the deficiencies of the Manasas et al. disclosure are addressed hereinabove. In view of the foregoing, if the combined teachings of the Ralph et al. and Manasas et al. references are to be used to reject claims 1-7 of the instant application, then the Ralph et al. reference must remedy the deficiencies of the Manasas et al. reference. Clearly, however, the Ralph et al. reference cannot, and does not, remedy the deficiencies discussed hereinabove with respect to the Manasas et al. reference. Accordingly, applicants respectfully request that the Examiner withdraw the § 103(a) rejection of claims 1-7 of the instant application.

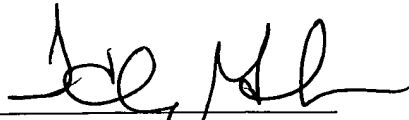
In view of the foregoing, Applicants submit that the instant claims are in condition for allowance. Early and favorable action is earnestly solicited.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 11-0223 therefore.

Respectfully submitted

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By:



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